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EXAMINER	
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3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/628,411	GULLO ET AL.	
	Examiner	Art Unit	
	Eric Liou	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5-8,11-28,30,31 and 33-44* is/are pending in the application.

4a) Of the above claim(s) *7-8, 18-19, 28, 30-31, and 33-44* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,6,11-17 and 20-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of invention I (claims 1-2, 5-6, 11-17, and 20-27) in the reply filed on 4/15/08 is acknowledged.

2. Claims 7-8, 18-19, 28, 30-31, and 33-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

4. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). The disclosure of the prior-filed application, Application No. 60/399,251, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. For example, the provisional application 60/399,251 fails to disclose at least the limitation, "digitally signing the

estimated postage amount, an addressee information, a sender information, and a date; and printing the digital signature." In fact, there is no mention of using a digital signature anywhere in the provisional application.

Response to Arguments

5. Applicant's arguments filed 7/31/07 have been fully considered but they are not persuasive.

6. Regarding claim 20, Applicant submits that claims 20-27 are improperly rejected under 35 USC § 102 because Martin does not disclose each and every element recited in the claim. Applicant further argues, "Martin does not disclose "printing a postage label including…verification information…" Instead, Martin "shows an example of four printed stamps on a label sheet 400." The Examiner respectfully disagrees. The postage system and method of Martin operates in accordance with the IBIP specifications published by the USPS (Martin: paragraph 0071). According to the IBIP program, an indicium may be provided using a digital signature (Martin: paragraph 0010). This supports authentication of the mail piece (Martin: paragraph 0010). Thus, the postage label of Martin includes verification information because authentication of each label is enabled. For these reasons, the Examiner maintains that the rejection of claims 20-27 under 35 USC § 102 is proper.

7. Applicant argues, "Martin fails to teach or suggest "means for outputting a postage indicia comprising a stealth postage for the amount prepaid," as recited in claim 11". Applicant points to paragraph 028 of Applicant's specification for a description of a stealth indicia. Paragraph 028 recites, " In one embodiment, shown in Figure 2, the printed postage indicia will

take the form of a "stealth postage" indicia 200, that is, the postage indicia will include the postage information represented only in machine readable format such as a two dimensional bar code 202 (the bar code may alternatively be implemented as a one-dimensional bar code-not shown). In this embodiment, the postage amount will not be printed on the postage indicia in a human readable form, but may instead include a notation 204 that the postage has been paid." It is noted that Applicant's specification does not define "stealth postage" to be postage indicia that includes the postage information represented only in a machine readable format. Instead, stealth postage is used in an embodiment as understood by Applicant. The Applicant may define a term in the specification, but it has to be done so with exactness (i.e., "The term stealth postage herein is defined as...."). See *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) ("The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim."). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67USPQ2d 1947, 1950 (Fed. Cir. 2003) ("Interpretation of descriptive statements in a patent's written description is a difficult task, as an inherent tension exists as to whether a statement is a clear lexicographic definition or a description of a preferred embodiment. The problem is to interpret claims in view of the specification' without unnecessarily importing limitations from the specification into the claims."), and *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d1865, 1868 (Fed. Cir. 2004) ("Though understanding the claim language

may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim."). Using a broad and reasonable interpretation, "stealth postage" as recited in claim 11 may be one of stamps 402, 404, and 406 because each stamp indicates a postage payment and includes a datamatrix code 432 that contains stored data related to the postage (Martin: Fig. 4; paragraph 0051). For these reasons, the Examiner maintains that Martin in view of Sansone teaches each and every feature of claims 11-17, and the rejection under 35 USC § 103 is proper.

8. Applicant's remaining arguments with respect to claims 1-2, 5-6, and 11-17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 1 recites the limitation, "digitally signing the estimated postage amount, an addressee information, a sender information, and a date; printing the digital signature, the postage amount, the addressee information, the sender information, and the date on a postage indicia in a bar code format." It is unclear in the printing step whether "the postage amount" is the "estimated postage amount". The Examiner interprets "the postage amount" to be "the estimated postage amount."

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin et al., U.S. Publication No. 2002/0046195.

14. **As per claim 24**, Martin teaches a computer-readable medium containing instructions for implementing a method for adjusting postage on a mailpiece (Martin: paragraph 0049), the method comprising:

estimating a postage amount necessary for a mailpiece (Martin: paragraph 0057 "the user makes a postage purchase selection");

transmitting payment information (Martin: paragraph 0057, "At a step 766 the user swipes a credit card through the card reader slot 124.");

printing a postage label including a postage amount represented only in an electronically readable format (Martin: Figure 4, The Examiner notes, the postal indicia may include a machine-readable portion as shown in paragraph 0006.) and a verification information allowing a

mailing system to subsequently adjust the mailing amount (Martin: Figure 4, paragraphs 0010; 0071).

15. **As per claim 25**, Martin further teaches creating the postage label by producing a bar code that contains postal information (Martin: paragraph 006). The further purported limitations of claim 25—wherein the bar code contains a date, the postage amount, an addressee information, a sender information, and a digital signature—constitute nonfunctional descriptive material and should not be given patentable weight. Nonfunctional descriptive material cannot lend patentability to an invention that would otherwise have been anticipated by the prior art. Altering the type of information on a barcode amounts to mere labeling of data and does not functionally relate to the substrate of the method. See MPEP 2106.01 [R-5]. When descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability (see *In re Ngai*, 367 F.3d 1336, 1339; 70 USPQ2d 1862, 1864 (Fed. Cir. 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)). Thus, claim 25 fails to further limit the invention claimed in claim 24 and is rejected under the same logic as described above.

16. **As per claim 26**, Martin further teaches the bar code further comprises a number unique to the postage indicia (Martin: paragraph 0006).

17. **As per claim 27**, Martin further teaches the bar code is a two dimensional bar code (Martin: paragraph 0006).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al., U.S. Publication No. 2002/0046195 in view of Sansone et al., U.S. Patent No. 5,019,991 and further in view of Whitehouse, U.S. Patent No. 6,005,945.

20. **As per claim 1**, Martin teaches a method for paying a proper amount of postage comprising:

estimating a postage amount necessary to send a piece of mail (Martin: paragraph 0057, "At a step 764, the user makes a postage purchase selection…");

prepaying for the estimated postage amount (Martin: paragraph 0057, "the user swipes a credit card");

digitally signing information (Martin: Fig. 4, "432"; paragraphs 0006; 0010; 0071; 0074);

printing the digital signature on a postage indicia in a bar code format (Martin: Fig. 4, "432"; paragraphs 0006; 0010; 0071; 0074; Martin teaches the IBIP program is directed to postal indicia that provides evidence of a postage payment. Note that the indicium includes a two-dimensional barcode/data matrix code 432 portion that is digitally signed.);

21. Martin does not explicitly teach digitally signing an addressee information, a sender information, and a date; printing the addressee information, the sender information, and the date

on a postage indicia; affixing to a mailpiece a postage indicia; mailing the mailpiece; and paying an adjusted postage amount, subsequent to the mailing of the mailpiece, in response to a bill.

22. Sansone teaches affixing to a mailpiece a postage indicia (Sansone: column 5, lines 13-15); mailing the mailpiece (Sansone: column 5, lines 13-15); and paying an adjusted postage amount, subsequent to the mailing of the mailpiece, in response to a bill (Sansone: column 5, lines 19-21, "...if the postage was not correct, then in block 1012 the descending registers are appropriately debited to reflect the correct postage.").

23. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Martin to have included affixing to a mailpiece a postage indicia; mailing the mailpiece; and paying an adjusted postage amount, subsequent to the mailing of the mailpiece, in response to a bill as taught by Sansone for the advantage of eliminating the need to return mail to a user in the event of a short payment (Sansone: column 2, lines 35-36).

24. Martin in view of Sansone does not explicitly teach digitally signing an addressee information, a sender information, and a date; and printing the addressee information, the sender information, and the date on a postage indicia.

25. Whitehouse teaches digitally signing an addressee information, a sender information, and a date (Whitehouse: col. 16, lines 19-37 and 62); and printing the addressee information, the sender information, and the date on a postage indicia (Whitehouse: Fig. 2; col. 16, lines 19-37).

26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Whitehouse to have included digitally signing an addressee information, a sender information, and a date; and printing the addressee information,

the sender information, and the date on a postage indicia as taught by Whitehouse for the advantage of securing postal data (Whitehouse: col. 16, lines 9-14).

27. **As per claim 2**, Martin further teaches prepaying the estimated postage amount comprises prepaying the estimated postage via the Internet (Martin: paragraph 0037, "in one embodiment communications network 108 is the Internet").

28. **As per claim 5**, Martin further teaches the bar code is a 2-dimensional bar code (Martin: paragraph 006).

29. **As per claim 6**, Sansone further teaches verifying that the postage indicia has not previously been used on a second mailpiece (Sansone: column 6, lines 54-58, "Upon receipt of the postal imprint indicia, the CPU checks to confirm the correctness of the indicia as conforming to an authorized postal meter certification apparatus, previously established by the user". The Examiner interprets confirming the correctness of the indicia as conforming to an authorized postal meter certification apparatus to include verifying that the postage indicia has not been previously used on a second mailpiece.).

30. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Martin in view of Sansone and further in view of Whitehouse to have included verifying that the postage indicia has not previously been used on a second mailpiece as taught by Sansone for the advantage of eliminating costly acceptance procedures set forth by the post office for reviewing bulk mail requirements (Sansone: column 6, lines 43-45).

31. Claims 11-17 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al., U.S. Publication No. 2002/0046195 in view of Sansone et al., U.S. Patent No. 5,019,991

32. **As per claim 11**, Martin teaches a system for preventing postage fraud comprising:

means for receiving an estimated postage amount necessary to send a parcel (Martin: paragraph 0057);

a printer for electronically prepaying the estimated postage amount (Martin: paragraph 0057 and Figure 3, "310") and

means for outputting a postage indicia comprising a stealth postage for the amount prepaid (Martin: paragraph 0057, Figure 3, "310").

Martin does not teach means for paying for an adjusted amount of postage subsequent to the mailing of the mailpiece.

33. Sansone teaches means for paying for an adjusted amount of postage subsequent to the mailing of the mailpiece (Sansone: column 5, lines 19-21, "…if the postage was not correct, then in block 1012 the descending registers are appropriately debited to reflect the correct postage.").

34. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Martin to have included means for paying for an adjusted amount of postage subsequent to the mailing of the mailpiece as taught by Sansone for the advantage of eliminating the need to return mail to a user in the event of a short payment (Sansone: column 2, lines 35-36).

35. **As per claim 12**, Martin further teaches the means for electronically prepaying comprises an Internet payment service (Martin: paragraph 0037, "in one embodiment communications network 108 is the Internet" and paragraph 0057).

36. **As per claim 13**, Martin further teaches a printer for printing the postage indicia (Martin: Figure 3, "310").

37. **As per claim 14**, Martin further teaches a processor for encoding the stealth indicia by digitally signing a postage amount, an addressee information, a sender information, and a date (Martin: paragraph 0017, "The server then validates the payment information, and upon validation, generates an indicium based on the request, where the indicium includes a digital signature." The Examiner interprets payment information to include a postage amount, an addressee information, a sender information, and a date.).

38. **As per claim 15**, Martin further teaches wherein the postage indicia a bar code (Martin: paragraph 0006).

39. **As per claim 16**, Martin further teaches the bar code is a 2-dimensional bar code (Martin: paragraph 0006).

40. **As per claim 17**, Sansone further teaches means for verifying that the postage indicia has not previously been used on a second mailpiece (Sansone: column 6, lines 54-58, "Upon receipt of the postal imprint indicia, the CPU checks to confirm the correctness of the indicia as conforming to an authorized postal meter certification apparatus, previously established by the user". The Examiner interprets confirming the correctness of the indicia as conforming to an authorized postal meter certification apparatus to include verifying that the postage indicia has not been previously used on a second mailpiece.).

41. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Martin to have included means for verifying that the postage indicia has not previously been used on a second mailpiece as taught by Sansone for the advantage of eliminating costly acceptance procedures set forth by the post office for reviewing bulk mail requirements (Sansone: column 6, lines 43-45).

42. **As per claim 20**, Martin teaches a computer-implemented method for adjusting postage on a mailpiece, comprising:

estimating an amount of postage necessary for a mailpiece (Martin: paragraph 0057 "the user makes a postage purchase selection");

transmitting payment information (Martin: paragraph 0057, "At a step 766 the user swipes a credit card through the card reader slot 124.");

printing a postage label including a postage amount represented only in an electronically readable format (Martin: Figure 4, The Examiner notes, the postal indicia may include a machine-readable portion as shown in paragraph 0006.) and verification information (Martin: Figure 4; paragraphs 0010; 0071).

43. Martin does not explicitly teach allowing a mailing system to subsequently adjust the postage amount.

44. Sansone teaches allowing a mailing system to subsequently adjust the postage amount (Sansone: column 5, lines 13-29, "…if the postage was not correct, then in block 1012 the descending registers are appropriately debited to reflect the correct postage.").

45. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Martin to have included allowing a mailing system to subsequently adjust the postage amount as taught by Sansone for the advantage of eliminating the need to return mail to a user in the event of a short payment (Sansone: column 2, lines 35-36).

46. **As per claim 21**, Martin further teaches creating the postage label by producing a bar code that contains postal information (Martin: paragraph 006). The further purported limitations of claim 21—wherein the bar code contains a date, the postage amount, an addressee information, a sender information, and a digital signature—constitute nonfunctional descriptive material and should not be given patentable weight. Nonfunctional descriptive material cannot lend patentability to an invention that would otherwise have been anticipated by the prior art. Altering the type of information on a barcode amounts to mere labeling of data and does not functionally relate to the substrate of the method. See MPEP 2106.01 [R-5]. When descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability (see *In re Ngai*, 367 F.3d 1336, 1339; 70 USPQ2d 1862, 1864 (Fed. Cir. 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)). Thus, claim 21 fails to further limit the invention claimed in claim 20 and is rejected under the same logic as described above.

47. **As per claim 22**, Martin further teaches the bar code further comprises a number unique to the postage indicia (Martin: paragraph 0006).

48. **As per claim 23**, Martin further teaches the bar code is a two dimensional bar code (Martin: paragraph 0006).

Conclusion

49. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The Examiner has cited particular portions of the references as applied to the claims above for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Liou whose telephone number is (571)270-1359. The examiner can normally be reached on Monday - Friday, 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Liou/
Examiner, Art Unit 3628

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628